

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ELMER PHIFER,

Plaintiff,

Hon. Janet T. Neff

v.

Case No. 1:16-cv-279

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

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REPORT AND RECOMMENDATION

On March 17, 2016, Plaintiff initiated this action seeking judicial review of the final decision of the Commissioner of Social Security denying his claim for disability benefits. Defendant moves to dismiss Plaintiff's action. Plaintiff has failed to respond to Defendant's motion. Pursuant to 28 U.S.C. § 636(b)(1)(B), the undersigned recommends that Defendant's motion be **granted** and this action **dismissed**.

Plaintiff applied for disability benefits on July 2, 2011. (PageID.76). Plaintiff's application was denied, after which time he requested a hearing before an Administrative Law Judge (ALJ). (PageID.78-84). Following a hearing, Plaintiff's application was denied by an Administrative Law Judge (ALJ), a determination affirmed by the Appeals Council. (PageID.85-106). On January 3, 2014, Plaintiff initiated a civil action seeking judicial review of the Commissioner's decision. *See Phifer v. Commissioner of Social Security*, 1:14-cv-4 (W.D. Mich.). On March 31, 2015, the Honorable Gordon J. Quist entered an Opinion and Order affirming the Commissioner's decision. *Phifer v. Commissioner of Social Security*, 1:14-cv-4, ECF Nos.16-17 (W.D. Mich.). Plaintiff appealed this decision to the Sixth Circuit which affirmed Judge Quist's

decision. *Phifer v. Commissioner of Social Security*, 1:14-cv-4, ECF No. 21 (W.D. Mich.). Plaintiff then initiated the present action in this Court.

The doctrine of res judicata provides that “a final judgment on the merits bars further claims by parties or their privies based on the same cause of action.” *Bragg v. Flint Board of Education*, 570 F.3d 775, 776 (6th Cir. 2009). For res judicata to apply, the following elements must be satisfied: (1) a final decision on the merits by a court of competent jurisdiction; (2) a subsequent action between the same parties or their privies; (3) an issue in the subsequent action which was litigated or should have been litigated in the prior action; and (4) an identity of the causes of action. *Id.* All four elements are satisfied presently. Accordingly, Plaintiff’s action is barred and must be dismissed.

CONCLUSION

For the reasons stated herein, the undersigned recommends that Plaintiff’s action be dismissed. The undersigned further recommends that appeal of this matter would not be taken in good faith. *See Smith v. Commissioner of Social Security*, 1999 WL 1336109 at *2 (6th Cir., Dec. 20, 1999); *Leal v. Commissioner of Social Security*, 2015 WL 731311 at *2 (N.D. Ohio, Feb. 19, 2015); 28 U.S.C. § 1915(a)(3).

OBJECTIONS to this report and recommendation must be filed with the Clerk of Court within fourteen (14) days of the date of service of this notice. 28 U.S.C. § 636(b)(1)(C). Failure to file objections within such time waives the right to appeal the District Court's order. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

Respectfully submitted,

Date: July 26, 2016

/s/ Ellen S. Carmody
ELLEN S. CARMODY
United States Magistrate Judge